

in the Application of:

Michael James Justin et al.

Group Art Unit 1743

Serial No.: 10/695,038

Examiner Nagpaul, J.

Filed: October 28, 2003

For: Carrier for Holding Test Samples

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. 1.705 (b)-(d)

Responsive to the Determination of Patent Term Adjustment set forth in the Notice of Allowance and in light of the recent ruling in *Wyeth v. Dudas*, No. 07-1492, slip op. (D.D.C. Sept. 30, 2008) the applicants submit this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(b)-(d).

The present patent is not subject to a terminal disclaimer.

11/25/2008 LNGUYEN2 00000023 10695030

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200.00 OP

A check in the amount of \$ 200 is enclosed for payment of the required fee for consideration of this request. Please charge any additional required fees or credit any overpayment to deposit account no. 13-2490.

The subject application was allowed on October 1, 2008. This request is being submitted in conjunction with the payment of the issue fees and therefore is timely.

The notice of allowance and the data available on PAIR indicates that the subject application has been granted a 905 day Patent Term Adjustment. The applicants submit that, due to the recent *Wyeth* decision, the correct Patent Term Adjustment should be 1,151 days. **The applicants therefore, requests that the subject application be granted an additional 246 days of patent term.**

Statement of facts and explanation of calculation

For purposes of this request and in keeping with the explanation provided in *Wyeth*, Patentees will refer to as the “A delay” as examination delay under 35 U.S.C. 154 (b)(1)(A). In the “A delay” the Patent Office delayed prosecution by issuing the first communication on 6/21/2007. The period of delay commenced on 12/28/2004, 14 months after the application filing date. The applicants calculate the period of A delay as beginning as 12/28/2004 and ending on June 21, 2007.

This period of PTO “A” delay is from 12/28/2004 until 6/21/2007, which is 905 days, as correctly stated in PAIR.

The Patent Office delayed issuance of the patent by more than three years, and the period of “B delay” (35 U.S.C. 154 (b)(1)(B)) commences on 10/28/2006 (three year anniversary of the filing date) and ends on the date that applicants filed a Request for Continued Examination (RCE) in response to the final rejection, filed February 22, 2008. (see 35 U.S.C. 154 (b)(1)(B)(i)). There is an overlap in the “B” period of delay with the “A” Period, i.e., between 10/28/2006 and 6/21/07. This overlap is not counted in determination of the “B” period of delay. Thus, the only days of “B” delay which are counted are the days between 6/21/07 and 2/22/08. **This period of “B” delay is 246 days by applicant’s calculation. These days of “B” were not accounted for in the PTO’s Patent Term Adjustment calculation, in violation of the *Wyeth v. Dudas***

decision. No. 07-1492, slip op. (D.D.C. Sept. 30, 2008)

The applicants were not responsible for any delays in the prosecution of the application, as correctly stated in PAIR.

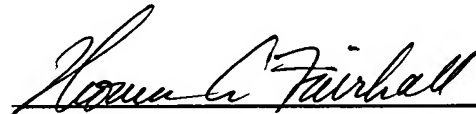
Therefore, the Patent Office was responsible for a total of 905 + 246 days or a total of 1,151 days of delay which is the proper patent term adjustment under *Wyeth*. The patent adjustment term as stated in the notice of allowance is deficient by 246 days.

In light of the foregoing, the Patentees respectfully request that an additional 246 days of Patent Term Adjustment be added to the patent term for Patent Office delay, resulting in a total Patent Term Adjustment of 1,151 days. If a telephone conference would expedite the prosecution of this Request for Reconsideration of Patent Term Adjustment, please contact the undersigned attorney as indicated below.

Respectfully submitted,

McDonnell Boehnen Hulbert & Berghoff LLP

Date: November 20, 2008

A handwritten signature in cursive script, reading "Thomas A. Fairhall", written over a horizontal line.

Thomas A. Fairhall
Reg. No. 34591
Ph. 360 379 6514



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket 01052
(MBHB Case No. 03-913)

In the Application of:)	
)	
Michael James Justin et al.)	
)	Group Art Unit 1743
)	
Serial No.: 10/695,038)	Examiner Nagpaul, J.
)	
Filed: October 28, 2003)	Confirmation No. 5708
)	
For: Carrier for Holding Test Samples)	

TRANSMITTAL LETTER

Mail Stop Issue Fees
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sirs:

1. In regard to the above-identified patent application:
 - A. Form PTOL-85 Part B- Fee(s) Transmittal
 - B. Check in the amount of \$1,828.00
 - C. Application for Patent Term Adjustment
 - D. Check in the amount of \$200.00
 - E. Return Postcard
2. With respect to additional fees:
 - A. ☐ No additional fee is required.
 - B. ☒ Attached are checks in the amounts of \$1,828.00 and \$200.00.
 - C. ☐ Charge the total additional fee to our Deposit Account No. 13-2490.
3. Please charge any additional fees or credit overpayments to the Deposit Account No. 13-2490. A duplicate copy of this sheet is enclosed.
4. **CERTIFICATE OF MAILING UNDER 37 CFR 1.8 (FIRST CLASS MAIL):**
The undersigned hereby certifies that this Transmittal Letter and the document(s) as described in paragraph 1 hereinabove, are being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Issue Fees, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 20th day of November 2008.

By:

Thomas A. Fairhall
Reg. No. 34,591



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket 01052
(MBHB Case No. 03-913)


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By: 
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